

Introduced by Senator Dutton

February 10, 2011

An act to amend Section 44956 of the Education Code, relating to education employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 266, as introduced, Dutton. Education employment: termination, reappointment, and opportunity for substitute service.

Existing law provides that, when employees are terminated pursuant to a reduction in workforce, a school district is required to terminate the employees in order of seniority. Existing law further provides those employees with preferred right to reappointment and opportunity for substitute service in order of seniority.

Existing law requires that, if a terminated employee who is offered the opportunity for substitute service serves for at least 21 out of 60 schooldays, the compensation received by the employee in that 60-day period be no less than the compensation the employee would receive if he or she were being reappointed.

This bill would delete the above-referenced requirement relating to compensation.

The bill would make various technical and nonsubstantive clarifying changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44956 of the Education Code is amended
2 to read:

1 44956. ~~(a) Any~~ A permanent employee whose services have
2 been terminated as provided in Section 44955 shall have the
3 following rights:

4 ~~(1)~~

5 (a) For the period of 39 months from the date of ~~such~~ *the*
6 termination, any employee who in the meantime has not attained
7 the age of 65 years shall have the preferred right to reappointment,
8 in the order of original employment as determined by the board
9 in accordance with ~~the provisions of~~ Sections 44831 to 44855,
10 inclusive, if the number of employees is increased or the
11 discontinued service is reestablished, with no requirements that
12 were not imposed upon other employees who continued in service;
13 provided, that no probationary or other employee with less seniority
14 shall be employed to render a service ~~which said that the~~ employee
15 is certificated and competent to render. However, prior to
16 reappointing any employee to teach a subject which he or she has
17 not previously taught, and for which he or she does not have a
18 teaching credential or which is not within the employee's major
19 area of postsecondary study or the equivalent thereof, the governing
20 board shall require the employee to pass a subject matter
21 competency test in the appropriate subject.

22 ~~(2)~~

23 (b) ~~The aforesaid~~ right to reappointment *pursuant to subdivision*
24 (a) may be waived by the employee, without prejudice, for not
25 more than one school year, unless the board extends this right, but
26 ~~such the~~ waiver shall not deprive the employee of his *or her* right
27 to subsequent offers of reappointment.

28 ~~(3)~~

29 (c) Notwithstanding ~~paragraph (1)~~ *subdivision (a)*, a school
30 district may deviate from reappointing a certificated employee in
31 order of seniority for either of the following reasons:

32 ~~(A)~~

33 (1) The district demonstrates a specific need for personnel to
34 teach a specific course or course of study, or to provide services
35 authorized by a services credential with a specialization in either
36 pupil personnel services or health for a school nurse, and that the
37 employee has special training and experience necessary to teach
38 that course or course of study, or to provide those services, which
39 others with more seniority do not possess.

40 ~~(B)~~

1 (2) For purposes of maintaining or achieving compliance with
2 constitutional requirements related to equal protection of the laws.

3 (4)

4 (d) ~~As to any such~~ For an employee who is reappointed, the
5 period of his *or her* absence shall be treated as a leave of absence
6 and shall not be considered as a break in the continuity of his *or*
7 *her* service, he *or she* shall retain the classification and order of
8 employment he *or she* had when his *or her* services were
9 terminated, and credit for prior service under any state or district
10 retirement system shall not be affected by ~~such~~ *the* termination,
11 but the period of his *or her* absence shall not count as a part of the
12 service required for retirement.

13 (5)

14 (e) During the period of ~~his~~ *an employee's* preferred right to
15 reappointment, ~~any such~~ *the* employee ~~shall~~, in the order of original
16 employment, *shall* be offered prior opportunity for substitute
17 service during the absence of any other employee who has been
18 granted a leave of absence or who is temporarily absent from duty;
19 provided, that his *or her* services may be terminated upon the
20 return to duty of ~~said~~ *the* other employee and that ~~said~~ *the* substitute
21 service shall not affect the retention of his *or her* previous
22 classification and rights. ~~If, in any school year the employee serves~~
23 ~~as a substitute in any position requiring certification for any 21~~
24 ~~days or more within a period of 60 schooldays, the compensation~~
25 ~~the employee receives for substitute service in that 60-day period,~~
26 ~~including his or her first 20 days of substitute service, shall be not~~
27 ~~less than the amount the employee would receive if he or she were~~
28 ~~being reappointed.~~

29 (6)

30 (g) (1) During the period of the employee's preferred right to
31 reappointment, the governing board of the district, if it is also the
32 governing board of one or more other districts, may assign ~~him~~
33 *the employee* to service, ~~which~~ *that* he *or she* is certificated and
34 competent to render, in ~~said~~ *one of the* other ~~district or districts;~~
35 ~~provided, that the districts. The compensation he the employee~~
36 ~~receives therefor may, in the discretion of the governing board,~~
37 ~~may be the same as he the employee would have received had he~~
38 ~~or she been serving in the district from which his the employee's~~
39 ~~services were terminated, that his terminated. The employee's~~
40 ~~service in the said other district or districts shall be counted toward~~

1 the period required for both state and local retirement, ~~as defined~~
2 ~~by Section 22102~~, as though rendered in the district from which
3 ~~his the employee's services were terminated, and that no permanent~~
4 ~~terminated. The employee in said shall not displace any other~~
5 ~~permanent employee in the other district or districts shall be~~
6 ~~displaced by him.~~

7 It

8 (2) ~~It is the intent of this subsection~~ *subdivision* that the
9 employees of a school district, the governing board of which is
10 also the governing board of one or more other school districts,
11 shall not be at a disadvantage as compared with employees of a
12 unified school district.

13 (7)

14 (h) At any time prior to the completion of one year after ~~his the~~
15 ~~employee's return to service, he the employee~~ may continue or
16 make up, with interest, his *or her* own contributions to any state
17 or district retirement system; for the period of his *or her* absence,
18 but it shall not be obligatory on *the* state or district to match ~~such~~
19 ~~the~~ contributions.

20 (8)

21 (i) ~~Should he become~~ *If the employee becomes* disabled or ~~reach~~
22 ~~reaches~~ retirement age at any time before his *or her* return to
23 service, ~~he the employee~~ shall receive, in any state or district
24 retirement system of which ~~he the employee~~ was a member, all
25 benefits to which he *or she* would have been entitled ~~had such~~
26 ~~event if the disability or retirement~~ occurred at the time of his *or*
27 *her* termination of service, plus any benefits ~~he the employee~~ may
28 have qualified for thereafter, as though still employed.